



INDIANA UTILITY REGULATORY COMMISSION  
302 W. WASHINGTON STREET, SUITE E-306  
INDIANAPOLIS, INDIANA 46204-2764

<http://www.state.in.us/iurc/>  
Office: (317) 232-2701  
Facsimile: (317) 232-6758

IN THE MATTER OF THE INDIANA )  
UTILITY REGULATORY COMMISSION'S )  
INVESTIGATION OF MATTERS RELATED )  
TO THE FEDERAL COMMUNICATIONS )  
COMMISSION'S REPORT AND ORDER )  
AND ORDER ON REMAND AND FURTHER )  
NOTICE OF PROPOSED RULEMAKING IN )  
CC DOCKET NOS. 01-338, 96-98, AND 98-147 )

FILED

CAUSE NO. 42500 SEP 23 2003

INDIANA UTILITY  
REGULATORY COMMISSION

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") makes the following entry in this Cause:

The Presiding Officers hereby set forth the following questions regarding the identification and determination of geographic markets in the context of the Commission's circuit switching impairment analysis. Initial responses to all questions included in this docket entry should be filed in this Cause on or before 12:00 noon, October 2, 2003. Replies should be filed in this Cause on or before October 8, 2003.

## I. Background.

Pursuant to the Federal Communications Commission ("FCC") Order as titled in the caption of this Cause ("Triennial Review Order" or "TRO"), the FCC has required states to define geographic markets as part of their circuit switching impairment assessments.<sup>1</sup> These requirements apply to both the enterprise and the mass markets.<sup>2</sup> Relevant language from the TRO and accompanying rules follows:

### §51.319(d)(3)(i) [Enterprise Market Determination]<sup>3</sup>

"In its petition, a state commission wishing to rebut the [FCC's] finding should petition the [FCC] to show that requesting telecommunications carriers are impaired without access to local circuit switching to serve end users using DS1 capacity and above loops in a particular geographic market as defined in accordance with paragraph (d)(2)(i) of this section if it finds that operational or economic barriers exist in that market."

<sup>1</sup> TRO ¶¶ 421, 455 & n. 1397; ¶495. See, generally, TRO, ¶¶ 130, 131.

<sup>2</sup> TRO, Appendix B, Final Rules, §51.319(d)(3)(i) & (d)(2)(i)

<sup>3</sup> See, also, TRO, ¶455.

§51.319(d)(2)(i) [Mass Market Determination]<sup>4</sup>

A state commission shall define the markets in which it will evaluate impairment by determining the relevant geographic area to include in each market. In defining markets, a state commission shall take into consideration the locations of mass market customers actually being served (if any) by competitors<sup>5</sup>, the variation in factors affecting competitors' ability to serve each group of customers<sup>6</sup>, and competitors' ability to target<sup>7</sup> and serve specific markets economically and efficiently, using currently available technology. A state commission shall not define the relevant geographic area as encompassing the entire state.<sup>8</sup>

Relevant FCC Discussion in the TRO

"State commissions should not define the market so narrowly that a competitor serving that market alone would not be able to take advantage of available scale and scope economies from serving a wider market."<sup>9</sup>

"State commissions should consider how competitors' ability to use self-provisioned switches or switches provided by a third-party wholesaler to serve various groups of customers varies geographically and should attempt to distinguish among markets where different findings of impairment are likely."<sup>10</sup>

The FCC recognized that many state commissions have distinguished among certain geographic markets within a state "for other purposes including retail ratemaking [and] the establishment of UNE loop rate zones ..."<sup>11</sup> The FCC indicated that states may use these existing geographic market boundaries, after considering the following factors:

- How UNE loop rates vary across the state,
- How retail rates vary geographically,
- How the number of high-revenue customers vary geographically, and
- How the cost of serving customers varies according to the size of the wire center and the location of the wire center, and variations in the capabilities of wire centers to provide adequate collocation space and handle large numbers of hot cuts.<sup>12</sup>

---

<sup>4</sup> See, also, TRO, ¶495 & 496.

<sup>5</sup> See, also, TRO, ¶495 & n. 1537. : "For example, if competitors with their own switches are only serving certain geographic areas, the state commission should consider establishing those areas to constitute separate markets."

<sup>6</sup> See, also, TRO, ¶495 & n. 1538.

<sup>7</sup> See, also, TRO, ¶495 & n. 1539: "For example, competitors often are able to target particular sets of customers, or customers in particular wire centers or rate zones.

<sup>8</sup> See, also, TRO, ¶495.

<sup>9</sup> TRO, ¶495.

<sup>10</sup> TRO, ¶495.

<sup>11</sup> See, e.g., TRO, ¶496. This list of geographic market areas for possible consideration by the IURC is illustrative and non-exhaustive.

<sup>12</sup> TRO, ¶496.

## II. Questions.

Please answer the following questions in relation to both enterprise market (90-day deadline) and mass market (9-month deadline) circuit switching impairment determinations. For each question, please clearly indicate the following:

- Whether your response applies only to the enterprise market circuit switching impairment analysis, only to the mass market circuit switching impairment analysis, or to both..
  - The ILEC(s) to which your response applies (for both enterprise and mass market circuit switching impairment determinations).
1. Considering the requirements set forth at §51.319(d)(2)(i) and (d)(3)(i), and the discussion in Paragraphs 495 and 496, please answer the following questions regarding the use of existing versus new definitions for geographic markets.
    - a. Do you believe the Commission should adopt an existing geographic market definition? Yes or No?
    - b. If you believe the Commission should adopt an *existing* geographic market definition(s), please identify the existing definition(s) you believe the Commission should adopt. Please explain your assumptions and support your recommendation(s).
    - c. If you believe the Commission should adopt a *new* geographic market definition(s):
      - i. Please identify and describe the new geographic market definition(s) you believe the Commission should use.
      - ii. Please explain your assumptions and support your recommendation(s).
      - iii. Please provide any suggestions you may have for the Commission in implementing a process for establishing new definitions that would allow the Commission to both establish the new geographic market definitions and complete the impairment/non-impairment analysis, within the FCC's deadlines.
  2. Keeping in mind the FCC's required deadlines in the TRO, is it necessary for the Commission to establish the definitions for geographic markets as a prerequisite to resolving certain issues or implementing certain portions of the TRO? Yes or No? If you answered "Yes," please identify the affected issue(s) and the affected section(s) and paragraph(s) of the TRO. Please identify any assumption(s) or constraint(s) underlying your response.
  3. Keeping in mind the FCC's required deadlines in the TRO, are there any issues that must be resolved or any tasks that must be completed before the Commission can establish geographic market definitions? Yes or No? If you answered "Yes," please identify the affected issue(s) and task(s) and the affected section(s) and

paragraph(s) of the TRO. Please identify any assumption(s) or constraint(s) underlying your response.

4. What is the impact on assessing impairment or non-impairment decisions of changing the size of a particular geographic market?

a. *Ceteris paribus*, what impact, if any, would increasing the size of a particular geographic area have on a determination of impairment or non-impairment?

- Impact on determination of economic impairment or non-impairment?
- Impact on determination of operational impairment or non-impairment?
- Other impact (if any)?

b. *Ceteris paribus*, what impact, if any, would decreasing the size of a particular geographic area have on a determination of impairment or non-impairment?

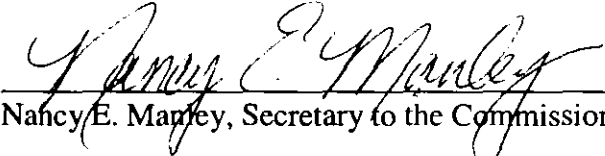
- Impact on determination of economic impairment or non-impairment?
- Impact on determination of operational impairment or non-impairment?
- Other impact (if any)?

**IT IS SO ORDERED.**

  
Judith G. Ripley, Commissioner

  
William G. Divine, Administrative Law Judge

Dated September 23 2003

  
Nancy E. Manley, Secretary to the Commission